YIT KEAN HONG

v.

PP

COURT OF APPEAL, PUTRAJAYA
ABDUL KADIR SULAIMAN JCA
ARIFIN ZAKARIA JCA
NIK HASHIM JCA
[CRIMINAL APPEAL NO: B-05-11-01]
14 OCTOBER 2005

CRIMINAL PROCEDURE: *Sentence - Appeal against sentence - Two sentences of 15 years' imprisonment for culpable homicide and attempted murder to run consecutively - Whether sentences manifestly excessive - Whether ought to run concurrently - Plea of guilty - Public interest - Deterrent sentence - Whether trial judge properly exercised discretion in imposing sentences*

The appellant, who was originally charged with two offences, *ie*, murder under s. 302 of the Penal Code ('the Code') and attempted murder under s. 307 of the Code, pleaded guilty to both the amended charge of culpable homicide under s. 304 (first limb) of the Code in respect of the first charge and to the second charge, which remained as it was. The appellant had admitted to causing the death of one Lew Kuan Fook by pouring petrol on him and setting him on fire, and attempting to murder one Lew Kong Loy by cutting his throat several times with a knife. The learned High Court judge, after considering the mitigating factors put forward by the appellant, sentenced him to 15 years' imprisonment for both offences respectively and ordered both sentences to run consecutively. The appellant, dissatisfied with the sentences imposed, appealed. He contended that the sentences of imprisonment were manifestly excessive and that they should be made to run concurrently, and that he was not given credit for pleading guilty to the charges.

Held (dismissing the appeal)
Per Nik Hashim JCA:

[1] The notes of proceedings of the record of appeal and the grounds of the learned judge's decision clearly indicated that the learned judge had taken into account the appellant's guilty plea in considering the sentences. The sentence of 15 years' imprisonment, which was three-quarters of the maximum of 20 years' imprisonment imposed for each charge, clearly reflected that the learned judge had given credit to the appellant for the guilty plea. (p 599 g-h)

[2] The two offences committed by the appellant were distinct in nature and involved two different victims. Although the two offences were committed in the course of a single transaction, the second charge of attempted murder was not really subsidiary to the first charge of culpable homicide. The victims suffered two different types of injuries and the methods of inflicting them on the two victims were also different. The learned judge, in imposing the sentences, had taken into consideration the guilty plea of the appellant and the seriousness of the two crimes as well as the element of public interest. (p 603 d-f)

[3] On the facts of this case, to impose a concurrent sentence and a sentence of imprisonment of less than 15 years for each of the offences would not be appropriate. While it was true that the total period of 30 years imprisonment was long and would have a crushing effect on the appellant, bearing in mind his relatively young age, the gruesome fact remained that the appellant had acted cruelly and brutally against the two defenceless victims. He did indeed deserve a deterrent sentence. Therefore, the sentences imposed were commensurate with the offences and were not manifestly excessive given the facts of the case, the circumstances of the offences and the background of the appellant. The learned judge had properly exercised his discretion in imposing the sentences and there were no grounds for interference in them. (pp 603 g & 604 a-b)

*[**Bahasa Malaysia** Translation of Headnotes*

Perayu, yang pada asalnya didakwa dengan two kesalahan iaitu membunuh di bawah s. 302 Kanun Keseksaan ('Kanun') dan percubaan membunuh di bawah s. 307 Kanun, mengaku bersalah kepada dakwaan yang dipinda iaitu homisid salah di bawah s. 304 (bahagian pertama) Kanun berkenaan dengan dakwaan pertama dan dakwaan kedua, yang berkekalan seperti yang asal. Perayu telah mengaku mengakibatkan kematian satu Lew Kuan Fook dengan menuang petrol ke atasnya dan membakarnya, dan membuat percubaan membunuh ke atas satu Lew Kong Loy dengan memotong lehernya beberapa kali dengan sebilah pisau. Hakim Mahkamah Tinggi yang arif, setelah mempertimbangkan factor-faktor peringanan yang dibentangkan oleh perayu, telah menghukum beliau kepada 15 tahun pemenjaraan di atas kedua-dua kesalahan masing-masing dan memerintah kedua-dua hukuman berjalan berturut-turut. Perayu, yang berasa tidak berpuashati dengan hukuman-hukuman tersebut, merayu. Beliau berhujah bahawa hukuman-hukuman pemenjaraan tersebut jelas terlampau dan bahawa mereka patut diperintah berjalan serentak, dan bahawa beliau tidak diberi kredit selepas mengaku bersalah ke atas dakwaan-dakwaan tersebut.

Diputuskan (menolak rayuan tersebut)
Oleh Nik Hashim HMR:

[1] Nota-nota prosiding rekod perayuan dan alasan keputusan hakim yang arif menunjukkan dengan jelas bahawa hakim yang arif telah mengambil dalam pertimbangan akuan bersalah perayu apabila memutuskan hukuman-hukuman tersebut. Hukuman 15 tahun tersebut, yang adalah tiga-perempat hukuman maksima 20 tahun yang dikenakan, menunjukkan dengan jelas bahawa hakim yang arif telah memberi kredit kepada perayu ke atas akuan bersalah tersebut.

[2] Kedua-dua kesalahan yang dilakukan oleh perayu adalah berbeza dan melibatkan dua mangsa yang berlainan. Walaupun kedua-dua kesalahan tersebut telah dilakukan dalam perjalanan satu transaksi, dakwaan kedua percubaan membunuh tidak sebenarnya subsidiari kepada dakwaan pertama homisid salah. Mangsa-mangsa tersebut mengalami kecederaan yang berlainan dan cara mereka diakibatkan ke atas mangsa-mangsa tersebut juga berbeza. Hakim yang arif, apabila menjatuhkan hukuman-hukuman tersebut, telah mempertimbangkan akuan bersalah perayu dan keseriusan kesalahan-kesalahan tersebut bersama elemen kepentingan awam.

[3] Berdasarkan fakta-fakta kes kini, untuk mengenakan hukuman serentak dan hukuman yang kurang dari 15 tahun bagi setiap kesalahan tidak berpatutan. Walaupun ia adalah benar bahawa tempoh keseluruhan pemenjaraan selama 30 tahun adalah panjang dan akan menghancurkan perayu apabila mengikat akan umur beliau yang muda dari segi relatif, ia merupakan fakta yang menggerunkan bahawa perayu telah bersifat kejam dan ganas terhadap kedua-dua mangsa yang tidak berupaya melindungi diri mereka. Beliau memang patut dijatuhkan hukuman pencegahan. Oleh itu, hukuman-hukuman yang dikenakan adalah berpatutan dengan kesalahan-kesalahan dan tidak terlampau berdasarkan fakta-fakta kes, keadaan kesalahan-kesalahan tersebut dan latar belakang perayu. Hakim yang arif telah menjalankan budi bicara dengan betul dalam menjatuhkan hukuman-hukuman tersebut dan tidak terdapat apa-apa alasan untuk campur tangan dengannya.]

Case(s) referred to:
Bachik Abdul Rahman v. PP [2004] 2 CLJ 572 CA ***(refd)***
Bhandulananda Jayatilake v. PP [1982] 1 MLJ 83 ***(refd)***
Ganesan Nachiappan & Ors v. PP [2000] 3 CLJ 302 CA ***(refd)***
Mohamad Abdullah Ang Swee Keng v. PP [1988] 1 MLJ 167 ***(refd)***
Ooi Sim Yim v. PP [1990] 1 CLJ 435; [1990] 1 CLJ (Rep) 223 SC ***(refd)***
PP v. Badron Zamanuddin [2005] 5 CLJ 493 HC ***(refd)***
PP v. Loo Choon Fatt [1976] 2 MLJ 256 ***(refd)***
PP v. Ng Chong Wan [1988] 3 MLJ 114 ***(refd)***
PP v. Ravindran & Ors [1993] 1 MLJ 45 ***(refd)***
PP v. Yap Huat Heng [1986] 1 CLJ 81; [1986] CLJ (Rep) 645 HC ***(refd)***
Zaidon Shariff v. PP [1996] 4 CLJ 441 HC ***(refd)***

Legislation referred to:
Arms Act 1960, s. 8(a)
Criminal Procedure Code, ss. 282(d), 376
Firearms (Increased Penalties) Act 1971, s. 8
Penal Code, ss. 302, 304, 307

For the appellant - Gurbachan Singh (Bachan & Kartar with him)
For the respondent/PP - Noorin Badaruddin DPP

[Appeal from High Court, Shah Alam; Criminal Trial No: 45-5-1999]

Reported by Suresh Nathan

JUDGMENT

Nik Hashim JCA:
The appellant was originally charged before the High Court Shah Alam for two offences: murder, for causing the death of Lew Kuan Fook, under s. 302 of the Penal Code (the Code), and attempted murder on Lew Kong Loy under s. 307 of the Code on 28 April 1998 at about 1am at No. 25, Kg. Asam Kumbang, Kuala Kubu Bharu, Hulu Selangor.

On the second day of the trial after four police witnesses had given their evidence, the prosecution tendered an amended charge for culpable homicide under s. 304 (first limb) of the Code in respect of the first charge. The second charge remained as it was. The amended charge and the second charge were read again to the appellant and he pleaded guilty to both the charges and understood the nature and consequences of his plea.

The facts of the case as submitted by the prosecution read as follows:

Fakta Kes

1. Pengadu dalam kes ini ialah Kopral 68741 Abdul Karim bin Lambak yang bertugas di Balai Polis Kuala Kubu Bharu, Hulu Selangor.

2. Pada 28 haribulan April 1998 jam lebih kurang 2.40 pagi, semasa pengadu bertugas di pejabat pertanyaan, Balai Polis Kuala Kubu Bharu, seorang lelaki Cina bernama Lew Kong Loy (iaitu "mangsa" dalam pertuduhan kedua) telah datang dalam keadaan cedera parah di bahagian leher serta berdarah. Pengadu telah mengarahkan supaya mangsa dihantar segera ke Hospital Kuala Kubu Bharu. Pengadu telah membuat suatu laporan maklumat pertama *vide* Kuala Kubu Bharu Report No. 453/99.

3. Kejadian tersebut telah dilaporkan kepada Insp Abdul Rashid bin Abu Bakar yang menjalankan siasatan dalam kes ini. Beliau telah pergi ke rumah beralamat nombor 25, Kampung Asam Kumbang, Kuala Kubu Bharu, di dalam Daerah Hulu Selangor, dalam Negeri Selangor Darul Ehsan (iaitu merupakan "tempat kejadian"), pada jam lebih kurang 3.10 pagi, 28 haribulan April 1998.

4. Apabila sampai di tempat kejadian, Insp Abdul Rashid mendapati seorang lelaki Cina bernama Lew Kuan Fook (iaitu "simati" dalam pertuduhan pertama) sedang berdiri di pintu rumah dan berkeadaan seperti orang yang terbakar di bahagian atas badan serta kepala dan mengalami kecederaan di bahagian telinga sebelah kanan. Simati telah dihantar segera ke Hospital Kuala Kubu Bharu.

5. Siasatan telah dijalankan di bahagian dalam tempat kejadian dan beliau mendapati kesan bakar dan darah di lantai simen dan kesan bakar pada sehelai kain di ruang tamu. Di ruang tamu rumah itu, terdapat kesan darah pada dinding dan juga kesan bakar pada sehelai kain yang dijumpai atas lantai. Di ruang dapur, terdapat kesan darah pada dinding dan tompokan darah atas lantai.

6. Jurugambar Lance-Kopral 109918 yang membantu Insp Abdul Rashid di tempat kejadian, telah mengambil gambar di tempat kejadian. Beliau juga ada mengambil gambar jalan tempat mangsa melarikan diri dari tempat kejadian serta gambar mangsa dan simati semasa rawatan dan gambar simati di bilik mayat pada tarikh kemudiannya.

7. Siasatan mendapati bahawa pada 28 haribulan April 1998, jam lebih kurang 1.00 pagi, simati telah balik ke tempat kejadian dari pusat permainan video. Simati adalah seorang yang mempunyai kecerdikan rendah dan masih bujang. Apabila mangsa melihat simati, dia telah memujuk simati supaya masuk ke dalam rumah tetapi simati enggan kerana keadaan panas. Mangsa kemudian telah masuk ke dalam rumah dan semasa berada dalam rumah itu, mangsa mendengar seseorang lelaki sedang bercakap dengan simati.

Apabila mangsa keluar untuk melihat, dia mendapati lelaki tersebut ialah OKT. Mangsa biasa melihat OKT di kawasan tersebut sebelum itu dan setelah mangsa bertanyakan OKT apa hal, OKT telah beredar.

8. Mangsa telah masuk semula ke dalam rumah manakala simati masih enggan masuk ke dalam. Mangsa kemudiannya telah masuk ke dalam biliknya dan semasa berada dalam bilik, mangsa melihat OKT telah berada dalam rumahnya dan hendak pergi di ruang dapur. Mangsa telah bangun dan telah segera mengekori OKT ke ruang dapur. Di situ, mangsa melihat OKT mengambil sebilah pisau yang diletakkan pada dinding dan mangsa telah bertanyakan pada OKT apa yang dia mahu bikin. OKT tidak bercakap apa-apa dan apabila mendekati mangsa, OKT telah terus memotong leher mangsa dengan pisau yang dipegangnya. OKT juga telah memegang rambut mangsa dan sekali lagi memotong leher mangsa di bahagian hadapan dan belakang. Mangsa telah terjatuh ke atas lantai dan berada dalam keadaan tertiarap.

9. Selepas itu, OKT telah pergi keluar dan mangsa telah mendengar simati bercakap "jangan main banyak sakit". Mangsa kemudian melihat OKT menarik simati masuk ruang dapur dan mangsa mendapati simati hanya berdiri dan berdiam diri sahaja. Setelah itu, OKT telah keluar dan masuk semula ke dalam rumah dengan membawa sebuah tong plastik hitam. OKT kemudiannya telah menyimbah minyak keatas simati dan selepas itu, telah menyalakan api pada simati hingga menyebabkan simati terbakar. Melihat keadaan itu, mangsa telah segera bangun dan melarikan diri mengikut pintu hadapan, dan mangsa mendapati OKT mengejarnya dari belakang. Mangsa dapat berlari hingga dia jatuh diatas jalan di hadapan sebuah rumah. Di situ OKT telah memotong leher mangsa beberapa kali dan mangsa telah berpura-pura "buat mati". Apabila keadaan sekeliling mula gempar, OKT telah melarikan diri dan apabila mangsa mendapati OKT telah tiada, mangsa bangun dan segera pergi ke Balai Polis Kuala Kubu Bharu.

10. Daripada Hospital Kuala Kubu Bharu, simati dan mangsa telah dibawa ke Hospital Kuala Lumpur untuk rawatan.

11. Hasil rawatan keatas simati adalah didapati simati mengalami 60% kebakaran daripada bahagian badan. Percakapan Dr Leow Chee Wah mendapati simati mengalami kecederaan lain iaitu "5cm laceration wounds on occipital area; 6cm laceration wounds on the right side of neck; 6cm laceration wounds on the posterior of the neck; 4cm laceration wounds on the back"; dan "thermal conjunctivitis". Simati meninggal dunia pada 1 haribulan Mei 1998 dan sebab kematian ialah "Septecemia secondary to 60% burn".

12. OKT telah mengaku membakar simati dengan menggunakan minyak petrol dan cuba membunuh mangsa dengan memotong lehernya.

The appellant admitted the facts as true. The learned judge after considering the mitigating factors put forward by learned counsel for the appellant, sentenced the appellant to 15 years imprisonment for the first offence with effect from his date of arrest, that is, 15 July 1998 and 15 years imprisonment for the second offence. The first and second sentences were ordered to run consecutively.

In explaining the reasons for imposing the sentences and the consecutive order, the learned judge in his grounds of judgment said:

> The offences were committed by the accused on 28 April 1998 at about 1 o'clock in the morning. The first offence was committed against one Lew Kuan Fook, the deceased; and the second offence was committed against one Lew Kong Loy. The deceased was a person of low intelligence. The offences were committed in, and nearby, the house of the victims. The accused had caused the death of the deceased by pouring petrol on him and then set him on fire.
>
> The accused had attempted to murder the second victim by cutting his throat several times with a knife. The second victim managed to escape death by pretending to be dead.
>
> At the time of the commission of the offences the accused was about 32 years of age and at the time of sentence the accused was 35. In mitigation, learned counsel for the accused informed the court that just prior to the commission of the offences the accused was in a depressed state of mind and was drunk. He was depressed because his girlfriend with whom he had stayed for two years had left him and added to that a moneylender to whom he owed money had been pressuring him to settle the debt.
>
> Having taken into account the plea of mitigation and the circumstances of the case, I sentenced the accused to 15 years imprisonment for the first offence, the sentence to take effect from the date of arrest. I also sentenced him to 15 years imprisonment for the second offence. I ordered that this second sentence to take effect consecutive to the first sentence.
>
> The offences committed were very serious each punishable with imprisonment of up to twenty years. The two victims were totally innocent. There was no provocation from them. The accused acted brutally and mercilessly. The offences were gruesome. After cutting the throat of the second victim, the accused set the deceased on fire; thereafter he chased the second victim (who by then had run out of the house) and again cut the latter's throat with the knife. The second victim was very lucky to have survived the ordeal. The public needs to be protected from such dangerous persons as the accused. Apart from the fact that the accused had pleaded guilty midway during the trial and he had shown remorse for his crimes, there are no serious mitigating factors.

> As the offences were distinct offences they should take effect consecutively. And considering the nature of the crimes and the surrounding circumstances, I do not think that the total period of thirty years is manifestly excessive.

The appellant was dissatisfied with the sentences imposed. Hence this appeal, contending that the sentences of imprisonment were manifestly excessive and that they should be made to run concurrently. He also complained that he was not given credit or discount at all for pleading guilty.

This appeal came up before us on 9 May 2005 but was adjourned to 12 May 2005 for further submissions. On the adjourned date, we dismissed the appeal and affirmed the sentences of the learned judge. We now give our reasons.

It must be remembered that the power of sentencing given to a trial court is a discretionary one. In an appeal against sentence, an appellate court would not disturb the sentence imposed unless the trial court had erred in applying the correct principles of sentencing or had embarked on some unauthorized or extraneous exercise of discretion (see *Ganesan a/l Nachiappan & Ors v. Public Prosecutor* [2000] 3 CLJ 302; *Public Prosecutor v. Loo Choon Fatt* [1976] 2 MLJ 256 and *Bhandulananda Jayatilake v. Public Prosecutor* [1982] 1 MLJ 83).

A plea of guilt is a mitigating factor (see *Zaidon Shariff v. Public Prosecutor* [1996] 4 CLJ 441). It is an accepted rule of practice that an accused should be given credit or discount for pleading guilty (see *Public Prosecutor v. Ravindran & Ors* [1993] 1 MLJ 45). The extent of the reduction on account of a plea of guilty would be between one-quarter and one-third of what otherwise would have been the sentence (see *Mohamad Abdullah Ang Swee Keng v. Public Prosecutor* [1988] 1 MLJ 167). But it is not a strict rule as the court may refuse to grant any discount in cases where public interest demands a deterrent sentence (see *Zaidon, supra*).

Having regard to the above principles, we shall now proceed to consider whether the learned judge had given credit or discount for the guilty plea of the appellant when he passed the sentences. The notes of proceeding at pp 36 to 38 of the record of appeal and the grounds of decision of the learned judge are quite clear. They clearly indicate that the learned judge had taken the appellant's guilty plea into account in considering the sentences and had given credit for the guilty plea. The sentence of 15 years imprisonment which is three-quarters of the maximum term of 20 years imprisonment imposed for each charge, clearly reflected that the learned judge had given credit or discount for pleading guilty to the charges. Otherwise, he would not have imposed the sentences that he did. It is therefore not correct to say that the learned judge had not given any credit or discount at all to the guilty plea. Accordingly, we hold that this ground must fail.

With regard to sentences of imprisonment, the law provides that every sentence of imprisonment shall take effect from the date on which it was passed unless the court passing the sentence otherwise directs (s. 282(d) of the Criminal Procedure Code). In deciding whether the sentences of imprisonment should run concurrently or consecutively, first and foremost, the court must look at the facts and circumstances of each case and the background of the accused. Generally, where two or more distinct offences have been committed, all sentences of imprisonment ought to be made consecutive. On the other hand, where the offences are committed in the course of a single transaction i.e. where the second offence is subsidiary to the first offence, the sentences of imprisonment ought to be made concurrent.

Decided cases which impose concurrent or consecutive sentence of imprisonment are numerous. Suffice to mention some of them here in order to show the basis on which such sentences were imposed by the courts.

(1) In *Public Prosecutor v. Ng Chong Wan* [1988] 3 MLJ 114, the respondent pleaded guilty to the offences of possession of a revolver and ten rounds of ammunition. The offences were punishable under s. 8 of the Firearms (Increased Penalties) Act 1971 and s. 8(a) of the Arms Act 1960 (1978 Revised) respectively. The trial court sentenced him to seven years imprisonment and six strokes of whipping for the first offence and five years imprisonment for the second offence, both sentences to run concurrently. The Public Prosecutor appealed against the sentences imposed, contending that they were manifestly inadequate and that the sentences should be made consecutive. In dismissing the appeal, Zakaria Yatim J (as he then was) ruled that the trial court was not wrong in law when it ordered the sentences to run concurrently. Earlier in his judgment the learned judge said:

> In the present case, the offences committed were mere possession of the firearm and ammunition. There is no evidence that he (the accused) used the gun to commit the offence. He pleaded guilty to both charges in the Sessions Court. **Considering all the facts and circumstances in this case,** I think the sentences passed by the learned president should not be disturbed.
>
> One last point to consider: Whether the sentences should run concurrently or consecutively. In both *Public Prosecutor v. Teh Ah Cheng* [1976] 2 MLJ 186 and *Public Prosecutor v. Chung Kwong Huah* [1981] 1 MLJ 316, sentences were ordered to run concurrently. In *Lee Chow Meng v. Public Prosecutor* [1976] 1 MLJ 287, Abdul Hamid J ordered the sentences to run consecutively but as already pointed out, in that case, the gun was used to commit robbery. (emphasis added)

(2) In *Public Prosecutor v. Yap Huat Heng* [1986] 1 CLJ 81; [1986] CLJ (Rep) 645, the facts were that the complainant a girl aged 17 years old and her sister aged 13 were raped and robbed of their jewellaries and cash. The charges against the respondent were two charges of rape and two charges of robbery. The respondent pleaded guilty to all four charges. The Sessions Court sentenced the respondent to three years imprisonment on each of the charges and ordered the sentences to run concurrently. The Public Prosecutor appealed. In allowing the appeal and ordering the sentences to run consecutively, Shaik Daud J (as he then was) ruled that the sentences imposed by the Sessions Court were not only manifestly inadequate but also wrong in law. He further held that where two or more distinct offences have been committed, sentences of imprisonment should not be made concurrent. It should only be made concurrent when an offender had been convicted of a principal and a subsidiary offences. In all other cases sentences should be made to run consecutively.

(3) In *Public Prosecutor v. Badron Zamanuddin* [2005] 5 CLJ 493, the respondent pleaded guilty to two separate offences of rape of a 12 year old child (the respondent's niece) for the first charge and of the same child when aged 13 years for the second offence and was sentenced to 16 years imprisonment and 3 strokes of whipping for each offence by the Sessions Court. The sentences of imprisonment were ordered to run concurrently from the date of the respondent's arrest. The Public Prosecutor appealed. VT Singham J, in allowing the appeal, held that the offences committed by the respondent did not arise out of the same transaction but were committed on separate dates and places and as such, the order for both sentences to run concurrently was erroneous and ought to be altered so as to run consecutively.

(4) In *Ooi Sim Yim v. Public Prosecutor* [1990] 1 CLJ 435; [1990] 1 CLJ (Rep) 223, the appellant had pleaded guilty to two charges: first for possession of a firearm and the second for possession of ammunition. The High Court sentenced the appellant to 10 years imprisonment and 6 strokes of whipping on the first charge and another 3 years on the second charge and ordered the terms of imprisonment to run consecutively from the date of arrest. The appellant appealed against the order contending that the two sentences should run concurrently. In allowing the appeal against consecutive imprisonment, Mohamed Azmi SCJ, delivering the judgment of the Supreme Court, held that since both the charges had arisen out of one and the same transaction, it was not unreasonable to conclude that the second charge was really subsidiary to the first charge. Thus, it was appropriate that the two sentences should run concurrently rather than consecutively.

In the present case, learned counsel for the appellant argued that the sentences of imprisonment should be made to run concurrently and not consecutively as ordered by the learned judge on the ground that the two offences were committed in the course of one transaction and relied on Court of Appeal case of *Bachik bin Abdul Rahman v. Public Prosecutor* [2004] 2 CLJ 572 to support his argument. In that case, the appellant was charged in the Sessions Court with rape of an 11 year old on 19 September 2001, an offence under s. 376 of the Code. He pleaded guilty and was sentenced to 18 years imprisonment and 12 strokes of the rotan. The sentence was ordered to take effect consecutively to another term of imprisonment of 16 years that the appellant was then serving, for an offence of rape that was committed on 14 October 2001. On appeal to the High Court, the term of imprisonment was reduced to 15 years but the consecutive order was affirmed. The appellant appealed. In dismissing the appeal, Augustine Paul JCA (now FCJ), delivering the judgement of the Court of Appeal (Ahmad Fairuz, CJ, Richard Malanjum JCA (now FCJ), with him), at p. 579 para 7 said:

> The exercise of the discretion to determine the date of commencement of the sentence of imprisonment is dependent on the facts and circumstances of each case. In deciding whether the terms of imprisonment should be consecutive or commence at another date, the court will be guided by the one transaction rule and the totality principle … The rule, however, is not absolute. As Yong Pung How CJ said in *Kanagasuntharam v. Public Prosecutor* [1992] 1 SLR 81 at p 83:
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> > The English courts have recognized that there are situations where consecutive sentences are necessary to discourage the type of criminal conduct being punished: *R v. Faulkner* [1972] 56 Cr App R 594, *R v. Wheatley* [1983] 5 Cr App R(S) 417 and *R v. Skinner* [1986] 8 Cr App R(S) 166. The applicability of the exception is said to depend on the facts of the case and the circumstances of the offence. It is stated in broad and general terms and although it may be criticized as vague, it is necessary in such terms in order that the sentencer may impose an appropriate sentence in each particular case upon each particular offender at the particular time the case is heard. (emphasis added)

Farther down, the Court of Appeal at p. 582 observed:

> It must be remembered that both the offences were executed in the same manner and are of the same severity and are unrelated. It cannot be denied that the cumulative effect of both the sentences will have a crushing effect on the accused bearing in mind his age. But this effect must be balanced against the seriousness of the offences committed by him and the need to protect young females from him. The order made by the High Court in upholding the direction of the Sessions Court on the commencement of the jail term imposed in this case is therefore correct in law and we are unable to interfere.

And at p. 584, the Court of Appeal continued:

> … the Sessions Court judge … makes it patently clear that in imposing sentence he had taken into consideration the seriousness of the offence against the background of the physical weakness and age of the victim; the element of public interest to be served; the effect of the crime on the victim; the previous sentence being served by the accused; and the need to protect society from persons like him …

It appears from *Bachik*'s case that the Court of Appeal, in upholding the consecutive term of imprisonment imposed by the Sessions Court, had applied the exception to the one transaction rule and the totality principle in that it took the facts of the case and the circumstances of the offence into consideration in reviewing the sentences. The offences committed by the accused in that case were of the same severity and unrelated and therefore deserving a deterrent sentence.

Similarly, in the present case, the two offences committed by the appellant were very serious indeed each punishable with imprisonment of up to 20 years. Like the case of *Yap Huat Heng, supra*, the present case also involved two distinct offences and two different victims. On the facts, the second charge of attempted murder was not really subsidiary to the first charge of culpable homicide, although the two offences were committed in the course of a single transaction. The victims suffered two different types of injuries and the methods of inflicting them on the two victims were also different from each other. Even learned counsel for the appellant conceded before us that the facts against the appellant were bad.

The learned judge, in his judgment, explained fully the reasons why he imposed 15 years imprisonment for each offence and ordered the jail term to run consecutively. In imposing the sentences, the learned judge had taken into consideration the guilty plea of the appellant and the seriousness of the two crimes as well as the element of public interest. In our view, on the facts of this case, to impose a concurrent sentence and a sentence of imprisonment of less than 15 years for each of the offences would not be appropriate. The public needs to be protected from such dangerous and violent man like the appellant.

Whilst it is true that the total period of 30 years imprisonment is long and will have a crushing effect on the appellant bearing in mind his relatively young age, the gruesome fact remains that the appellant had acted cruelly and brutally on the two defenceless victims. Indeed he deserved a deterrent sentence. To our minds, the sentences imposed were commensurate with the offences. The learned judge had properly exercised his discretion in imposing the sentences and there were no grounds for us to interfere with them. The sentences were not manifestly excessive given the facts of the case, the circumstances of the offences and the background of the appellant. The appeal was therefore dismissed. The sentences and the order made by the High Court were affirmed.